

# Exhibit

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Thomas A. Berson et al.

Application No.: 09/662,246

Filed: September 14, 2000

For: SENSOR WITH SIGNATURE OF  
DATA RELATING TO SENSOR

Examiner: Matthew J. Kremer

Art Unit: 3736

DECLARATION UNDER  
37 CFR § 1.131

Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

We, the undersigned inventors, declare as follows:

1. We are all the co-inventors of the above-captioned patent application, except for Michael Fein, deceased.

2. We understand that in an Office Action, certain of the claims have been rejected as unpatentable over Cordero Patent No. 6,298,255, filed June 9, 1999 and von der Ruhr Patent No. 6,308,089, filed April 14, 1999.

3. We conceived the invention disclosed and claimed in the relevant claims of the above application prior to January 8, 1999. Enclosed as Exhibit A is a letter from Dennis Kovach describing our invention in broad terms. The letter describes a digital signature on data stored in an oximeter sensor memory chip. The use of a private key to write data on the sensor and an asymmetric public key and a monitor to read the data is described. The Scientific American article attached to the letter describes the use of an RSA signature, a Diffie-Hellman signature and an El Gamal signature on page 111 of that article.

4. Attached as Exhibit B is a cover letter dated April 13, 1999 from Paul Haughey enclosing a first draft of a patent application on our invention. From that date until the application was filed with the Patent Office as a provisional application on September 28, 1999, we diligently worked on reducing the invention to practice by review and revision of the patent application along with development efforts for the product, including producing product specifications, doing design work and working with outside consultants.

5. Attached as Exhibit C is the first page of a Software Design Specification dated May 17, 1999.

6. Attached as Exhibit D is a FAX cover sheet from Dennis Kovach dated May 19, 1999, including comments on the draft application (not included).

7. Attached as Exhibit E is a copy of a May 19, 1999 memo (confidential information redacted) regarding the approval of a digital signature contract for the encryption software by outside contractor Uptronics. Bryan Olson was a Cryptologic Engineer with Uptronics, and is one of the inventors. Another inventor, Thomas Berson, was also associated with Uptronics. The approval of this contract remained in force through the filing of the above-referenced patent application, with the Uptronics engineers working with the assignee's engineers (the other inventors listed below) throughout that time on development of the invention claimed in the application.

8. Attached as Exhibit F is a copy of a letter dated June 10, 1999 from Paul Haughey including a second draft of a patent application on our invention.

9. Attached as Exhibit G is a copy of a letter dated September 15, 1999 from Dennis Kovach with comments on the second draft.

10. We hereby declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to

be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Dated 30 July 2002



Thomas A. Berson

Dated \_\_\_\_\_

Bryan Olson

Dated \_\_\_\_\_

Paul D. Mannheimer

Dated \_\_\_\_\_

Charles E. Porges

Dated \_\_\_\_\_

David Schloemer

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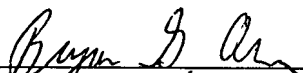
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Dated \_\_\_\_\_

\_\_\_\_\_  
Thomas A. Berson

Dated 13 Aug 2002

\_\_\_\_\_  
  
Bryan Olson

Dated \_\_\_\_\_

\_\_\_\_\_  
Paul D. Mannheimer

Dated \_\_\_\_\_

\_\_\_\_\_  
Charles E. Porges

Dated \_\_\_\_\_

\_\_\_\_\_  
David Schloemer

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Thomas A. Berson

Dated \_\_\_\_\_

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Bryan Olson

Dated Aug 14, 2002

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Charles E. Porges  
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David Schloemer  
David Schloemer